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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,551	06/28/2002	Satoshi Mekata	AKY-0002	3224
23353	7590	12/10/2003	EXAMINER	
RADER FISHMAN & GRAUER PLLC			LEVY, NEIL S	
LION BUILDING			ART UNIT	PAPER NUMBER
1233 20TH STREET N.W., SUITE 501			1616	
WASHINGTON, DC 20036			DATE MAILED: 12/10/2003	

13

Please find below and/or attached an Office communication concerning this application or proceeding.

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EXAMINER

ART UNIT PAPER NUMBER

13

DATE MAILED:

This is a communication from the examiner in charge of your application.  
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## OFFICE ACTION SUMMARY

Responsive to communication(s) filed on 9/18/03

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claims

Claim(s) 4-9 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 4-9 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

Notice of Reference Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 8/11

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

Art Unit: 1616

Applicant supplied EP 1249482, not W001/025368.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by Suk et al *Ca.* 1166374.

The rejection of record is maintained.

Claims 4-6 are ~~new like~~ only in broader language, of 1-3. Suk provides low flammability composition, with the claimed materials, thus, meeting the claimed invention, inherently.

Claims 4-6 are rejected under 35 U.S.C. 102(a) as being anticipated by Watanabe EP 0888716.

The rejection of record is maintained.

Here, too, the instant components, thus results, are disclosed.

The declaration does not show control, or the instant composition flash point, and does not have the required oil component, which would ameliorate the flash point seen with the high % of alcohol-The declaration used 33-50% alcohol while Suk used 25% (examples 1-10) or 12% (example 11) in the equivalent concentrate (absent propellant) compositions, Suk also was for safer compositions (p.13, line 5).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe et al EP 0888716 and Burke-5620678 and Dohara et al 5055299.

Watanabe provide the instant concentrates of solvent for active, with water, polyol and oil (example 5) and DME propellant. However, isopropanol also is a solvent. Burke shows isopropanol, as solvent, can be replaced (col.3 top). Burke also address the selection of solvents, and diluents (col.1, bottom-line 19 col.2, and lines 35-65, col. 2) with particular insecticides, in order to provide a homogenous composition depending upon DME, which then permits separation of hydrophilic and oleophilic combinations upon spraying, leaving more insecticide available for insect contact (lines 63-65, col.2).

Dohara (col.1, 2, -Group III) show the replacement co-solvents for pyrethroids of isopropyl alcohol-these incude propylene glycols (col.2, lines 3-5), with DME again the propellant, and water present as a portion of the 10-55% buffer solutions (col.2; lines 34-44).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize aerosol pyrethroid insecticides, to use Watanabe, modified as shown by Burke to improve efficacy, and with solution of co-solvents equivalents of alcohol as disclosed by Dohora.

The selection of control ingredients and concentrations are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the concentration each ingredient to optimize the effect desired and the use of ingredients for the functionality for which they are known to be used is not a basis for patentability.

The instant invention provides well known old art recognized compounds, with well known art recognized effects, applied by well known art recognized methods to achieve improved sustained treatment as is well known in the art.

Claims 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson-WO 96/22686 in view of Dohara et al 5055299.

Nelson also provides the instant compositions of aqueous phase with hydrocarbon solvent for insecticides (p.3, top) permitting separation at spraying.

Hydrocarbon are shown (p.6) with co solvents-alcohols (p.6, bottom), pyrethroids (p.7, top) water at 30-70% of total (p.7, midpage) and DME or alternative propellants (p.7, bottom) at 8-50% (p.8, top). The % of co solvent, and choice of alcohol is the only variation from the instant ingredients.

Dohora, also addressing pyrethroid insecticides sprays, shows substitution of alcohols with glycols.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made, desiring to utilize aerosol insecticides, to use the Nelson invention, modified as desired with the particular equivalently useful propellant and co-solvent, as shown by Dohora.

The selection of each ingredient and form thereof is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredient to optimize the effects desired, and the use ingredients for the functionality for which they are known to be used is not a basis for patentability.

Art Unit: 1616

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556. After hours is (703) 872-9307.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy/tgd  
November 25, 2003



NEIL S. LEVY  
PRIMARY EXAMINER